



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JUNE 17, 2022

IN THE MATTER OF:

Appeal Board No. 621584

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination holding the claimant eligible to receive benefits. The employer requested a hearing and objected contending that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct in connection with that employment and that wages paid to the claimant by such employer should not count in determining whether the claimant files a valid original claim in the future.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed February 22, 2022 (), the Administrative Law Judge overruled the employer's objection and sustained the initial determination of eligibility.

The employer appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked from July 9, 2018, through October 25, 2021, as a Cancer Care Technician for a medical facility. The claimant's last day of work was on October 21, 2021. The claimant was told not to report to work on October 22, 2021, because the employer was investigating a complaint made against the claimant by a co-worker. The co-worker, a registered nurse, had complained that the claimant had been loud, hostile and harsh towards her on October 11, 2021. She complained that the claimant had argued with the

nurse about bringing a commode to a patient's room and about wearing earbuds which was against policy. On October 25, 2021, the claimant was informed that the employer was terminating her services. The termination document noted that the claimant brought a commode into a patient's room after being instructed not to and that she wore earbuds in violation of hospital policy and argued with the registered nurse which was disruptive to the orderly operation of the hospital.

OPINION: The credible evidence establishes that the claimant was discharged on October 25, 2021, because of a complaint of disruptive behavior on October 11, 2021. We credit the claimant's denial of the charges brought against her by the hospital. We accept the claimant's testimony that, while she had discussed bringing the commode to the patient's room with the nurse, the nurse approved the action and claimant did not argue with the nurse about this. And we also credit that the claimant was not wearing earbuds on October 11, 2021. We further credit that the claimant did not engage in aggressive behavior toward the registered nurse on that date. We do not credit the testimony of the employer's witness, the registered nurse, that the claimant was hostile towards the nurse when the nurse confronted her for two alleged transgressions. We note that though the nurse testified that the claimant was loud and engaged in harsh behavior, the nurse admits that she can't remember what the claimant said to her on that date. It is not reasonable the if the claimant was arguing and hostile towards the nurse, she would forget what was said. And though the nurse testified that the claimant pointed at her and waived her hands, and was harsh in her motions, the termination paperwork states none of this alleged behavior as the cause of her discharge. Additionally, we find it significant, that if the claimant was engaging in aggressive and hostile behavior in the presence of staff and patients and their families, that the employer did not present any witnesses to the argument with the nurse on October 11, 2021, as they were represented, and it was their case to present. Finally, if is not reasonable that, if claimant was so hostile and disruptive to hospital operation, she would be allowed to continue to work from October 11, 2021, until October 22, 2021, with patients and staff.

Under these circumstances, we conclude that the claimant did not engage in disqualifying behavior and that she is entitled to receive benefits.

DECISION: The decision of the Administrative Law Judge is affirmed.

The employer's objection, that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct in connection with that employment and that wages paid to the claimant by such employer should not count in determining whether the claimant files a valid original claim in the future, is overruled.

The initial determination, holding the claimant eligible to receive benefits, is sustained.

The claimant is allowed benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER